

CITY OF HORSESHOE BAY

ORDINANCE NO. ORD 07-07-10B

ANTENNA REGULATION ORDINANCE

AN ORDINANCE OF THE CITY OF HORSESHOE BAY ESTABLISHING PERMITTING AND SITING REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS AND SIMILAR TOWERS WITHIN THE CORPORATE LIMITS OF THE CITY; AND PROVIDING FOR: EFFECTIVE DATE; SITING HIERARCHY; DEFINITIONS; EXEMPTIONS; PLACEMENT OF FACILITIES ONLY ON PARCELS WHERE RESIDENTIAL STRUCTURE IS NOT PRINCIPAL USE; APPROVAL AND SUBMITTAL REQUIREMENTS FOR NEW AND REPLACEMENT ANTENNA-SUPPORT STRUCTURES; COLLOCATION ON EXISTING ANTENNA-SUPPORT STRUCTURE; ATTACHED WIRELESS COMMUNICATIONS FACILITIES, STEALTH WIRELESS COMMUNICATIONS FACILITIES, AND OTHER AMATEUR ANTENNA OVER TWENTY FEET IN HEIGHT; EXPERT REVIEW; ABANDONMENT; PERMIT APPLICATION PROCESS AND FEES; APPLICANT'S RIGHT TO RECONSIDERATION; DORMANT PROJECTS; SEVERABILITY; REPEALER, AND ENFORCEMENT INCLUDING A FINE NOT TO EXCEED \$500.00 AND CIVIL PENALTY NOT TO EXCEED \$500.00.

WHEREAS, the City Council of the City of Horseshoe Bay seeks to promote the health, safety and general welfare of the public and protect the beauty and small town character of the City by regulating the location and construction of wireless communication facilities; and

WHEREAS, the City Council seeks to respond to the policies embodied in the Telecommunications Act of 1996 so as not to unreasonably discriminate between providers of functionally equivalent personal wireless service or to prohibit or have the effect of prohibiting personal wireless service in the City; and

WHEREAS, notice was given and a public hearing was held in regard to this Ordinance on the 20th day of June, 2007 in compliance with section VII. of the City Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

II. ANTENNA REGULATIONS

(a) Scope

The provisions of this Ordinance shall apply within the City Limits (i.e., incorporated municipal boundary).

(b) Compliance Required

It shall be unlawful for any person to violate the provisions of this Ordinance.

(c) Definitions

For the purposes of this Ordinance, the terms and phrases listed below shall have the following meanings:

(1) *Ancillary Structures* means forms of development associated with a wireless communications facility, including but not limited to: foundations, concrete slabs on grade, guy wire anchors, generators, and transmission cable supports; however, specifically excluding equipment enclosures.

(2) *Antenna* means any apparatus designed for the transmitting and/or receiving of electromagnetic waves that includes but is not limited to telephonic, radio or television communications. Types of antennas include, but are not limited to: omni-directional (whip) antennas, sectorized (panel) antennas, multi or single bay (FM & TV), yagi, or parabolic (dish) antennas.

(3) *Antenna Array* means a single or group of antennas and their associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support.

(4) *Antenna-Supporting Structure* means a vertical projection composed of metal, or other substance with or without a foundation that is for the express purpose of accommodating antennas at a desired height above grade. Antenna-supporting structures do not include any device used to attach antennas to an existing building, unless the device extends above the highest point of the building by more than ten (10) feet.

- (5) *Attached Wireless Communication Facility* means an antenna or antenna array that is attached to an existing building with any accompanying pole or device which attaches it to the building, transmission cables, and an equipment enclosure, which may be located either inside or outside of the existing building. An attached wireless communications facility is considered to be an accessory use, as defined in the City Zoning Ordinance, to the existing principal use on a site.
- (6) *Colocation* means a situation in which two or more different wireless communication service providers place wireless communication antenna or antennas on a common antenna-supporting structure.
- (7) *Equipment Enclosure* means any structure above the base flood elevation including: cabinets, shelters, pedestals, and other similar structures. Equipment enclosures are used exclusively to contain radio or other equipment necessary for the transmission or reception of wireless communication signals and not for the storage of equipment nor as habitable space.
- (8) *Guyed* means a style of antenna-supporting structure consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of guy wires that are connected to anchors placed in the ground or on a building.
- (9) *Lattice* means a tapered style of antenna-supporting structure that consists of vertical and horizontal supports with multiple legs and cross-bracing, and metal crossed strips or bars to support antennas.
- (10) *Monopole* means a style of free-standing antenna-supporting structure that is composed of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of antenna-supporting structure is designed to support itself without the use of guy wires or other stabilization devices. These structures are mounted to a foundation that rests on or in the ground or on a building's roof.
- (11) *Permit* means a written authorization obtained from the City's Development Services Department approved by the City Council
- (12) *Personal Wireless Service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in the Telecommunications Act of 1996.
- (13) *Radio Frequency Emissions* means any electromagnetic radiation or other communications signal emitted from an antenna or antenna-related equipment on the ground, antenna-supporting structure, building, or other vertical projection.

(14) *Replacement* means the construction of a new antenna-supporting structure built to replace an existing antenna-supporting structure.

(15) *Stealth Wireless Communications Facility* means a wireless communications facility, ancillary structure, or equipment enclosure that is not readily visible or identifiable as such, and is designed to be aesthetically compatible with existing and proposed uses on a site. A stealth wireless communications facility is considered to be an accessory use, as defined in the City Zoning Ordinance, to the existing principal use on a site.

(16) *Wireless Communications* means any personal wireless service, which includes but is not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), unlicensed spectrum services utilizing Part 15 devices (i.e. wireless internet services) and paging.

(17) *Wireless Communication Facility (WCF)* means any staffed or unstaffed facility for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of an antenna or group of antennas, transmission cables, and equipment enclosures, and may include an antenna-supporting structure and includes the following developments: new or existing antenna-supporting structures, replacement antenna-supporting structures, collocations on existing antenna-supporting structures, attached wireless communications facilities and stealth wireless communication facilities.

(d) Exemptions

The following are exempt from the provisions of this Ordinance:

(1) Regular maintenance of any existing wireless communications facility that does not include the addition of, or the placement of, any new wireless communications facility;

(2) A government-owned or leased wireless communications facility or wireless communication facility on government property or on government leased property;

(3) Antenna-supporting structures, antennas and/or antenna arrays for transmission facilities licensed by the Federal Communications Commission;

(4) Commonly accepted home satellite dishes, television antennas, for reception of commercial television transmissions, and internet antennas. Every effort should be made to locate these antennas to be as unobtrusive against the skyline as possible; and

(5) It is not the intention of this ordinance to prevent or deny public safety organizations and agencies from utilizing any and all applications, physical structures, and equipment in the performance of their duties for the purposes of public health and safety.

(e) Location

Except as permitted in Section J or otherwise required by law, Wireless Communications Facilities may only locate, with a permit, on parcels where the principal use is commercial and not as a residential structure.

(f) Permitting

All defined elements in Section (c) “(1)” through “(17)” will require a city issued permit.

(1) **REVIEW CRITERIA.** For each of “(1)” through “(17)” in Section (c), the following will be considered in order to obtain a permit.

(A) Compliance with the minimum setback requirements for the zoning use district;

(B) The overall height;

(C) Type of construction;

(D) Whether the entire structure and all appurtenances shall be designed and sealed by a licensed engineer in the state of Texas pursuant to the wind speed design requirements of ASCE 7-95, as may be modified;

(E) Whether all structures shall be illuminated in accordance with FAA requirements;

(F) Whether the applicant demonstrates that no existing wireless communications facility can accommodate the applicant’s proposed facility; or that use of such existing facilities would prohibit personal wireless services in the area of the city to be served by the proposed antenna-supporting structure;

(G) Whether Radio frequency emissions comply with FCC standards for such emissions on an individual and cumulative basis with any adjacent facilities;

(H) Whether applicants provide for screening between the wireless telecommunications facility and any residential area or public right of ways;

(I) Whether signage, other than warning and other signs required by a governmental agency, will be placed on the structure and all appurtenances;

(J) Whether structures will be configured and located in a manner that will minimize adverse effects including visual impacts on adjacent properties. The following attributes will be considered in this regard: location, mass, scale, height, color, material, illumination, and screening.

(K) Whether site plan submittals and construction plan submittals are sealed by a licensed engineer in the state of Texas.

(L) Whether submittals include a copy of the FCC license.

(g) Expert Review

The City may require a technical review of an application by a third party expert, the costs of which shall be borne by the applicant, which sum shall be in addition to ANY other applicable fees. Based on the results of the expert review, the City may require a change to the applicant's design.

(h) Abandonment

Antenna shall be removed, at the owner's expense, within one hundred eighty (180) days of cessation of use, unless the abandonment is associated with a replacement antenna structure, in which case the removal shall occur within ninety (90) days of cessation of use. The City may extend the time for removal or reactivation up to sixty (60) days upon receipt of a written request and showing of good cause.

(i) Application Process and Review Fees

(1) Permit applications shall be filed with the Development Services Department of the City. The City shall review all permit applications within fifteen (15) days of submittal to determine whether the application is administratively complete. The Applicant shall provide public notice in the form and content as specified by the City Staff which shall include information on how and where to obtain information and or protest the application. The Applicant shall notify in writing all property owners within 200 feet a minimum of 10 days prior to the City Council meeting. After proper notice has been documented, the City Development Services staff will forward a recommendation to the City Council whether to grant or deny a permit application at the City Council meeting for which notice has been provided. The City Council shall, after receipt of a recommendation from the City staff, approve or deny an application for a permit along with written findings. If the permit is denied, the written findings will be supported by substantial evidence contained in a written record, including, but not limited to information provided by the Expert Review.

(2) Application fees are due and payable by the applicant at the time of submission of application materials as follows:

<u>Type of Facility</u>	<u>Fee</u>
Stealth Wireless Communications Facility	\$100
Attached Wireless Communications Facility	\$100
Replacement of Existing Antenna Support Structure	\$100
Collocation on Existing Antenna Supporting Structure	\$100
New Antenna Support Structure	\$100
High Speed Internet Provider	No Fee

(j) Amateur Wireless Facility

An applicant proposing an amateur wireless facility in excess of twenty (20) feet in height shall be required to obtain a permit.

(1) **APPROVAL CRITERIA.** In addition to the review criteria listed in Section (f), for an amateur wireless communications facility application to be approved, it shall:

- (A) Be an accessory use to a legal, principal use on site (e.g. residence);
- (B) Meet the setback requirements for accessory uses for the zoning district;
- (C) Contain a written commitment by applicant that the facility will be erected in accordance with manufacturer's recommendations; and
- (D) If more than two hundred twenty (220) voltage is present in the ground grid or in the tower, a sign shall be attached to the tower and shall display in large bold letters the following: "HIGH VOLTAGE--DANGER."

(2) **SUBMITTAL REQUIREMENTS.** In addition to the submittal requirements found in Section I, for an amateur wireless facility application to be considered complete, it shall contain;

- (A) Site plan sketch showing all proposed structures (e.g. support structures, anchorage) and setbacks from such structures to property boundaries;
- (B) Applicant's copy of current, valid FCC license for amateur radio operation; and
- (C) An application fee of \$10.00

(k) Applicant's Right to Reconsideration

If any party who has applied for authority to construct a Wireless Communications Facility pursuant to this Ordinance is aggrieved by any decision arising from application of this Ordinance to such proposed facility, such party shall have fifteen (15) days from the effective date of the decision of the City to formally request reconsideration of such decision to the City Council by filing a written request with the City Secretary. The applicant shall be required to send notices of the City Council meeting to reconsider the request in the same manner as for the initial City Council meeting, The City Council's decision under reconsideration shall be final.

(l) Dormant Projects

Permits issued pursuant to this section expire one year from the date of issuance if construction of the facility is not completed by that time. Applicants can seek a one-year extension of permits by submitting a written request to the City Council at least 30 days prior to the expiration date.

III. EFFECTIVE DATE

This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

IV. SEVERABILITY

It is hereby declared to be the intention of the City that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

V. REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

VI. ENFORCEMENT

(a) The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

(b) Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500). Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a Misdemeanor.

(c) Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law, including, but not limited to the following:

(1) Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance;

(2) A civil penalty up to five hundred dollars (\$500) a day when it is shown that the defendant was actually notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and

(3) Other available relief.

VII. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED this 10th day of July, 2007, by a vote of the City Council of the City of Horseshoe Bay, Texas.

CITY OF HORSESHOE BAY, TEXAS

/S/

Robert W. Lambert, Mayor

ATTEST:

/S/

Toni Vanderburg, City Secretary